IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 1ST NOVEMBER 2006 / 10TH KARTHIKA 1928

MFA.No. 309 of 2002()

OPMV.2283/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM

.....

APPELLANT: PETITIONER

JOHN JOSEPH, S/O. JOSEPH,
ELAKKODICKAL HOUSE, PRAYAR KARA,KIDANGOOR VILLAGE,
KOTTAYAM.

BY ADV. SRI.P.RAVINDRA BABU
SRI.SURIN GEORGE IPE

RESPONDENTS: RESPONDENTS

---

1. KERALA STATE ROAD TRANSPORT CORPORATION,
THIRUVANANTHAPURAM.

2. RAJU JOSE, KERALA STATE ROAD TRANSPORT
CORPORATION DEPOT, KOTTARAKARA.

BY ADV. SRI.SAJEEV KUMAR K. GOPAL SC FOR KSRTC
SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

= =

M.F.A.309 of 2002 & C.M.P.1572 of 2002

= =

Dated this the 1st day of November, 2006.

JUDGMENT

This is an appeal filed by the claimant in a motor accident claim case with a petition to condone delay.

2. Having heard the counsel for parties and having perused the affidavit filed in support of the petition to condone delay, I am satisfied that the claimant has shown sufficient cause to condone the delay. The petition, C.M.P.No.1572/2002 is accordingly allowed.

3. The appeal is admitted. Learned counsel for the KSRTC takes notice. The matter is heard finally.

4. The appellant-claimant was the conductor of a bus involved in an accident. According to the driver, a pedestrian abruptly crossed the road and

the driver had to apply brake and it was as a result of the same that the claimant, who was the conductor, fell inside the bus resulting in injuries to him. The said fact situation cannot, however, be treated as one where the claimant-conductor could be attributed with contributory negligence. The Tribunal has held that the claimant has contributed 50% negligence in the accident on the assumption that the conductor also ought to have been careful while the bus is being driven. The concept of due care and caution while carrying on the duties and responsibilities attached to the office of a conductor in a bus, has to be understood in a reasonable manner. The conductor, who may be carrying on his duties inside the bus, cannot be attributed with such care and caution as is expected of a driver, who can see a pedestrian crossing the road. At any rate, the finding that the claimant has contributed negligence for the accident is unsustainable. The same is vacated.

5. On to the question of compensation fixed, the claimant had proved that he had expended Rs.13,000/-

for treatment in an ayurveda hospital for the dislocation of the joint, though he claimed only Rs.3,000/-. The Tribunal granted only Rs.1,000/- under this head. I find it just and necessary to grant the claimant an enhancement of Rs.2,000/- on this count. Ext.A6 would show that the claimant was absent from duty without any allowance for 169 days as a result of the accident. He had claimed Rs.13,000/- as loss of earnings for that period. There is no reason why that ought not to have been granted. He is entitled to the said amount of Rs.13,000/-, instead of Rs.2,390/-, as loss of earnings. Thus, he is entitled to an additional compensation of Rs.10,610/- towards loss of earnings.

In the result, this appeal is allowed in part granting the appellant-claimant an additional amount of Rs.18,805/- towards compensation, rounded off at Rs.18,800/-. The claimant, being an employee of the first respondent KSRTC which has a continuous saga of weeping over its debts, will be entitled only to the interest at 4% per annum on the aforesaid amount of

compensation from the date of petition, i.e., 19-10-1994 till date of realisation. The first respondent is directed to satisfy this award within a period of three months.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = = = = = = = = = = = = = = = = =

M.F.A.309 of 2002 & C.M.P.1572 of 2002

= = = = = = = = = = = = = = = = = = = =

Dated this the 9th day of November, 2006.

O R D E R

Listed to be spoken to. Spoke. No modification required.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = = = = = = = = = = = = = = = =

M.F.A.309/2002 & C.M.P.1572/2002

= = = = = = = = = = = = = = = = = = =

JUDGMENT

Dated: 1st November, 2006.